

1 KARL S. HALL  
2 Reno City Attorney  
3 JONATHAN D. SHIPMAN  
4 Assistant City Attorney  
5 Nevada State Bar No. 5778  
6 WILLIAM J. McKEAN  
7 Deputy City Attorney  
8 Nevada State Bar No. 6740  
9 CHANDENI K. SENDALL  
Deputy City Attorney  
Nevada State Bar No. 12750  
Post Office Box 1900  
Reno, Nevada 89505  
(775) 334-2050  
*Attorneys for Defendant City of Reno*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

DANNY LEE CLEOUS AND SHARRON L.  
CLEOUS.

CASE NO.: 3:20-cv-00585-RCJ-CLB

## **DEFENDANT CITY OF RENO'S MOTION TO DISMISS**

VS.  
THE CITY OF RENO, a political subdivision  
of the State of Nevada, and DOES 1 through  
10 inclusive.

### Defendants.

23           Defendant City of Reno (“Defendant” or the “City”), by and through its attorneys, Reno  
24 City Attorney Karl S. Hall, and Deputy City Attorney William J. McKean, hereby submits its  
25 Motion to Dismiss Plaintiffs’ Verified Complaint for failure to state a claim upon which relief  
26 can be granted. This Motion is made and based on Rule 12(b)(6) of the Federal Rules of Civil  
27 Procedure (“FRCP”), the pleadings and papers on file herein, and the following memorandum of  
28 points and authorities.

**Reno City  
Attorney  
P.O. Box 1900  
Reno, NV 89505**

## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. INTRODUCTION

On October 16, 2020, Plaintiffs Sharron and Danny Cleous initiated this action under 42 U.S.C. § 1983 alleging a violation of Fifth Amendment’s Takings Clause. EFC No.1 (Complaint), ¶¶91-102. The Complaint also alleges Nevada state-law claims for inverse condemnation, trespass, conversion, and nuisance.<sup>1</sup> *Id.*, ¶¶103-124.

## II. FACTUAL ALLEGATIONS

Plaintiffs make the following allegations: This case involves a residential property located at 11630 Tupelo Street in Washoe County, Nevada. EFC 1, ¶5. The property is owned by Sharron Cleous, but only her son Danny Cleous lives there. *Id.*, ¶¶5, 62 & 64. Between February and May 2017—for the first time in over 50 years—Swan Lake overflowed its natural boundary. *Id.*, ¶14 & 70. This overflow “physically invaded” the property on February 8, 2017, and continued through May 2017. *Id.*, ¶¶67 & 70. During that time period, Danny Cleous was displaced from the property for three days. *Id.*, ¶75. Plaintiffs allege that the overflow was caused by the City’s approval of private development and operation of a wastewater treatment

<sup>1</sup> The City was served with the Complaint on January 5, 2021. Since January 5, 2021, the City has been served with a total of 27 complaints on behalf of plaintiffs asserting the same causes of action based on similar factual and/or legal allegations. Those other complaints have been docketed as *Aguilar vs. City of Reno*, 3:21-cv-00011-MMD-CLB; *Berns vs. City of Reno*, 3:20-cv-00649-MMD-CLB; *Berry vs. City of Reno*, 3:21-cv-00038-LRH-CLB; *Bushey vs. City of Reno*, 3:20-cv-00650-MMD-WGC; *Conlin vs. City of Reno*, 3:21-cv-00012-MMD-WGC; *Dekker vs. City of Reno*, 3:20-cv-00712-LRH-WGC; *Donohoe vs. City of Reno*, 3:21-cv-00014-MMD-CLB; *Dutcher vs. City of Reno*, 3:21-cv-00015-MMD-CLB; *Estrada vs. City of Reno*, 3:20-cv-00579-MMD-CLB; *Hall vs. City of Reno*, 3:21-cv-00040-MMD-WGC; *Hughett vs. City of Reno*, 3:21-cv-00036-MMD-WGC; *King vs. City of Reno*, 3:21-cv-00024-MMD-CLB; *Launer vs. City of Reno*, 3:21-cv-00026-HDM-CLB; *Loffer vs. City of Reno*, 3:20-cv-00711-MMD-CLB; *Long vs. City of Reno*, 3:21-cv-00023-MMD-WGC; *Nauman vs. City of Reno*, 3:20-cv-00713-RCJ-CLB; *New Life Assembly of God vs. City of Reno*, 3:21-cv-00016-MMD-WGC; *Nevarez vs. City of Reno*, 3:21-cv-00017-HDM-CLB; *Novak vs. City of Reno*, 3:20-cv-00586-MMD-WGC; *Pearson vs. City of Reno*, 3:21-cv-00021-MMD-WGC; *Pool vs. City of Reno*, 3:21-cv-00029-MMD-CLB; *Ross vs. City of Reno*, 3:21-cv-00022-HDM-WGC; *Schutte vs. City of Reno*, 3:20-cv-00714-MMD-CLB; *Siminoe vs. City of Reno*, 3:20-cv-00595-RCJ-CLB; *Sotelo vs. City of Reno*, 3:21-cv-00037-MMD-CLB; and *Spencer vs. City of Reno*, 3:20-cv-00715-MMD-WGC.

1 plant over the prior 30 years. *Id.*, ¶61. They also allege that the soils on the property became  
 2 saturated, and that it now requires “tens of thousands of dollars” in repairs. *Id.*, ¶76 & 78.

3 In May 2017, a class action was commenced in Nevada state court based on the Swan  
 4 Lake flooding, alleging claims of inverse condemnation, trespass, nuisance, and conversion  
 5 against the City. *Id.*, ¶¶87<sup>2</sup>, 84. The class action was decertified in July 2020. *Id.*, ¶89.  
 6 Plaintiffs allege that the class action tolled the statute of limitations “as a matter of law.” *Id.*,  
 7 ¶90.

8 On October 16, 2020—approximately 3-½ years after the alleged “physical invasion”—  
 9 Plaintiffs initiated this action under 42 U.S.C. § 1983 for a violation of Fifth Amendment’s  
 10 Takings Clause, along with pendant state-law claims for inverse condemnation, trespass,  
 11 conversion, and nuisance. *Id.*, ¶¶91-124.

### 12 III. STANDARD OF REVIEW

13 A motion to dismiss under FRCP 12(b)(6) essentially seeks a “ruling on a question of  
 14 law.” *North Star Int’l v. Ariz. Corp. Comm.*, 720 F.2d 578, 580 (9th Cir. 1983). In such cases,  
 15 court’s review is limited to the contents of the complaint, as well as matters properly subject to  
 16 judicial notice. *Ramirez v. Galaza*, 334 F.3d 850, 854 (9th Cir. 2003).

17 To “survive a motion to dismiss, a complaint must contain sufficient factual matter,  
 18 accepted as true, to ‘state a claim for relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556  
 19 U.S. 662, 678 (2009) (*quoting Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In this  
 20 regard, a plaintiff must allege “more than labels and conclusions” or a “formulaic recitation of  
 21 the elements of a cause of action.” *Twombly*, 550 U.S. at 555. The factual allegations “must be  
 22 enough to raise a right to relief above the speculative level on the assumption that all the  
 23 allegations in the complaint are true (even if doubtful in fact).” *Id.* (citation omitted). However,  
 24 a court is “not bound to accept as true a legal conclusion couched as a factual allegation.” *Iqbal*,  
 25 556 U.S. at 679 (*quoting Twombly* at 555). Finally, a complaint may be dismissed where “the  
 26  
 27  
 28

---

<sup>2</sup>Plaintiffs’ Complaint includes two paragraphs numerically referenced as 87. This citation refers to the first paragraph 87 immediately following the sub-title, “Procedural Background.”

1 running of the statute is apparent on the face of the complaint.” *Jablon v. Dean Witter & Co.*,  
 2 614 F.2d 677, 682 (9th Cir. 1980).

3 Accordingly, a dismissal of this case may be based on: (a) the lack of a cognizable legal  
 4 theory, or (b) insufficient facts under a cognizable legal theory. *SmileCare Dental Group v.*  
 5 *Delta Dental Plan of California, Inc.*, 88 F.3d 780, 783 (9th Cir. 1996) (citation omitted). In  
 6 addition, dismissal may be granted where the running of the applicable statute of limitation is  
 7 apparent from the face of the complaint. *TwoRivers v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1999).  
 8 Based upon these standards, Plaintiffs’ Complaint should be dismissed.

#### 9                  IV. LEGAL ARGUMENT

10 Plaintiffs’ sole federal claim is an action under 42 U.S.C. § 1983.<sup>3</sup> For the reasons  
 11 discussed below, that claim fails as a matter of law. In the absence of a valid federal claim, this  
 12 Court should decline to exercise jurisdiction over Plaintiffs’ pendant state-law claims. However,  
 13 even if the Court were to exercise supplemental jurisdiction, Plaintiffs’ state law claims also fail  
 14 as a matter of law.

15 **A. Plaintiffs’ sole federal claim fails as a matter of law.**

16 As previously noted, Plaintiffs assert only one federal claim in this case—a Fifth  
 17 Amendment takings claim under Section 1983. Accepting their allegations as true, this claim  
 18 fails because it is time-barred. Even if Plaintiffs’ federal claim was not time barred, there is no  
 19 factual basis for their conclusory allegation that the claimed injury was caused by a municipal  
 20 “policy or custom.”<sup>4</sup>

---

21  
 22  
 23 <sup>3</sup> A plaintiff “complaining of a violation of a constitutional right does not have a direct cause of  
 24 action under the United States Constitution but must utilize 42 U.S.C. § 1983.” *Arpin v. Santa*  
*Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001) (citation omitted); *see also*  
*Hacienda Valley Mobile Estates v. City of Morgan Hill*, 353 F.3d 651, 655 (9th Cir. 2003)  
 25 (“Taking claims must be brought under § 1983.”). In addition, while Plaintiffs also seek a  
 26 declaration of their rights pursuant 28 U.S.C. § 2201, that statute does not provide an  
 27 independent source of federal jurisdiction, but merely provides an additional remedy once  
 jurisdiction is found to exist on another ground. *See Benson v. State Bd. of Parole and*  
*Probation*, 384 F.2d 238, 239 (9th Cir. 1967).

28 <sup>4</sup> In addition, Plaintiffs fail to allege that Plaintiff Danny Cleous is an owner of the property.  
 ECF No. 1, ¶¶5 & 62. At a minimum, then, the Court should rule he has failed to state a valid

1       **1. Plaintiffs' Section 1983 claim is time barred.**

2       In Nevada, a Section 1983 claim is subject to a two-year statute of limitations. *Perez v.*  
 3 *Seavers*, 869 F.2d 425, 426 (9th Cir. 1989) (applying NRS 11.190(4)(e) (*citing Wilson v. Garcia*,  
 4 471 U.S. 261, 279-80 (1985) (ruling that the applicable state statute of limitations for Section  
 5 1983 claims is the limitations period for personal injury claims)). A Section 1983 claim is also  
 6 subject to Nevada's tolling provisions. *TwoRivers v. Lewis*, 174 F.3d 987, 992 (9th Cir. 1999)  
 7 ("where the federal courts borrow the state statute of limitations, we also borrow the forum  
 8 state's tolling rules"). Finally, such a claim accrues when the plaintiff knows or has reason to  
 9 know of the underlying injury. *Kimes v. Stone*, 84 F.3d 1121, 1128 (9th Cir. 1996).

10      Here, the alleged unlawful taking occurred on February 8, 2017—when the Plaintiffs  
 11 contend they became aware of the City's alleged physical invasion. *Id.*, ¶¶67 & 70. Thus the  
 12 applicable two-year limitations period expired on February 8, 2019. The Complaint, however,  
 13 was filed more than 20-months later—on October 16, 2020.

14      Apparently recognizing this patent defect, Plaintiffs allege that the statute of limitations  
 15 was tolled by a previously-decertified state-court class action. *Id.*, ¶90 ("For the purposes of  
 16 statute of limitations, all periods between October 30, 2017 and July 6, 2020 are tolled **as a**  
 17 **matter of law** for each member of the class action.") (emphases added). Presumably, Plaintiffs  
 18 rely on the doctrine of class action tolling as announced in *American Pipe & Construction Co. v.*  
 19 *Utah*, 414 U.S. 538 (1974). That doctrine does not apply here, however, as it applies "within the  
 20 federal court system in federal question class actions only." *Centaur Classic Convertible*  
 21 *Arbitrage Fund Ltd. v. Countrywide Fin. Corp.*, 878 F. Supp. 2d 1009, 1014-15 (C.D. Cal.  
 22 2011).

23      Where members of a decertified **state** class action seek to bring subsequent claims in  
 24 **federal** court based on class action tolling, the forum state must first have adopted the doctrine of  
 25 cross-jurisdictional tolling. *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1025 (9th Cir.  
 26

---

27      federal taking claim. *United States v. Dow*, 357 U.S. 17, 20-21 (1958) (a plaintiff seeking just  
 28 compensation for a taking under the Fifth Amendment must be the owner of the property at the  
 time of the taking).

1 2008) (noting that only a “handful of states” have adopted cross-jurisdictional tolling). Nevada  
 2 has **not** done so. *Archon Corp. v. Dist. Ct.*, 133 Nev. 816, 407 P.3d 702 (2017) (declining to  
 3 adopt “[c]ross-jurisdictional class-action tolling” which “would suspend the statute of limitations  
 4 . . . even if the class action was pending in a different jurisdiction than the one in which the  
 5 individual plaintiff later brings suit.”). When a state has not addressed the issue of cross-  
 6 jurisdictional tolling, a federal court will refrain from importing the doctrine into the state.  
 7 *Clemens*, 534 F.3d at 1025. Thus, cross-jurisdictional tolling is not applicable in this case.

8 In summary, Plaintiffs’ Section 1983 claim is time barred under the applicable two-year  
 9 statute of limitations, and, that period is not tolled by a state-court class action because Nevada  
 10 has not adopted the doctrine of cross-jurisdictional class action tolling.

11       **2. Plaintiffs fail to state a claim for municipal liability under Section 1983.**

12 To state a Section 1983 claim, a plaintiff must identify a municipality’s “policy or  
 13 custom” that caused the alleged injury. *Monell v. New York City Dep’t of Social Serv’s*, 436 U.S.  
 14 658, 694 (1978). A “custom” is a “widespread practice that, although not authorized by written  
 15 law or express municipal policy, is so permanent and well-settled as to constitute a custom or  
 16 usage with the force of law.” *St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988). A practice is a  
 17 “custom” only if it is “so persistent and widespread that it constitutes a permanent and well  
 18 settled city policy.” *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir.1996) (citation omitted).  
 19 Negligence is not enough. *Daniels v. Williams*, 474 U.S. 327, 333-36 (1986) (“lack of due care  
 20 suggests no more than a failure to measure up to the conduct of a reasonable person.”). And  
 21 more proof than a single incident is necessary to establish the requisite fault on the part of the  
 22 municipality. *Christie v. Iopa*, 176 F.3d 1231, 1235 (9th Cir. 1999) (“A single constitutional  
 23 deprivation ordinarily is insufficient to establish a longstanding practice or custom.”); *Davis v.*  
 24 *City of Ellensburg*, 869 F.2d 1230, 1233 (9th Cir. 1989) (“A plaintiff cannot prove the existence  
 25 of a municipal policy or custom based solely on the occurrence of a single incident . . .”).

26 Here, in a superficial attempt to plead a valid *Monell* claim, Plaintiffs include a  
 27 conclusory statement that the City has a “practice and policy of unlawfully using [11630 Tupelo]  
 28 as storage for its flood waters.” ECF No. 1, ¶98. The Complaint alleges no factual basis for

1 such a legal conclusion. To the contrary, the only formal municipal policy Plaintiffs specifically  
 2 identify is one intended to “*mitigate* potential flooding in the area.” *Id.*, ¶41 (emphasis added).  
 3 In the absence of any supporting factual allegation, Plaintiffs’ claim of an unlawful City policy  
 4 amounts to nothing more than a “formulaic recitation,” which is insufficient to state a Section  
 5 1983 claim. *See Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011) (affirming  
 6 dismissal of a Monell claim that “lack[ed] any factual allegations that would separate [it] from  
 7 the ‘formulaic recitation of a cause of action’s elements’ deemed insufficient by *Twombly*.”).  
 8 Plaintiffs may actually be attempting to allege that the flooding was caused by the City’s *failure*  
 9 to enforce its policy intended to “mitigate potential flooding in the area.” ECF 1, ¶41. In that  
 10 case, however, such an allegation would amount to mere negligence, which is also insufficient to  
 11 state a Section 1983 claim. *See Daniels*, 474 U.S. at 333-36.

12 Alternatively, it may be that Plaintiffs are attempting to allege their claimed injury was  
 13 caused by a “practice” of the City. ECF No. 1, ¶34, 45 (alleging the City has maintained and  
 14 operated to public infrastructure “since the early 1980s,” and approved development plans since  
 15 2002). However, controlling case law holds that absent a “formal governmental policy,” a  
 16 plaintiff must allege their harm was caused by a “longstanding practice . . . which constitutes the  
 17 standard operating procedure of the local government entity.” *Trevino*, 99 F.3d at 918 (citations  
 18 omitted). Here, however, Plaintiffs *admit* in their allegations that this type of flooding has *never*  
 19 *occurred in the prior 50 years*. ECF No. 1, ¶14. Such an allegation is inconsistent with the  
 20 existence of any longstanding City practice to use Plaintiffs’ property at 11630 Tupelo as  
 21 “storage for [the City’s] flood waters.” ECF No. 1, ¶98.

22 Accordingly, Plaintiffs fail to state a Section 1983 claim for municipal liability under the  
 23 requirements set forth in *Monell*.

24       **3. The Court should decline to exercise Supplemental Jurisdiction.**

25 Pursuant to 28 U.S.C. § 1337(a), a federal court may exercise supplemental jurisdiction  
 26 over a plaintiff’s claims arising out of state law where said claims form part of the same case or  
 27 controversy as do the federal questions at issue. The Court may decline, however, to exercise  
 28 supplemental jurisdiction over state law claims if the court determines that the federal claims

1 warrant dismissal. 28 U.S.C. § 1367(c)(3). “If the federal claims are dismissed before trial, even  
 2 though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well.”  
 3 *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726 (1966); *Wade v. Regional Credit*  
 4 *Association*, 87 F.3d 1098, 1101 (9th Cir. 1996) (“where a district court dismisses a federal  
 5 claim, leaving only state claims for resolution, it should decline jurisdiction over the state claims  
 6 and dismiss them without prejudice”).

7 Accordingly, upon this Court’s dismissal of Plaintiffs’ sole federal claim premised on 42  
 8 U.S.C. § 1983, Plaintiffs’ state law claims should be wholly dismissed as well.

9 **B. Plaintiffs’ state law claims each fail as a matter of law.**

10 Even if this Court were to exercise supplemental jurisdiction over Plaintiffs’ state law  
 11 claims, there are independent grounds for dismissal of those claims. First, Plaintiffs’ three tort  
 12 claims are barred by the applicable Nevada statute of limitations. Second, Plaintiffs fail to allege  
 13 the elements necessary to a state takings claim based on flooding under Nevada law.<sup>5</sup>

14 **1. Tort statute of limitations: Trespass, Conversion, Nuisance**

15 Plaintiffs’ tort claims are based on state law, and therefore, Nevada law governs the  
 16 statute of limitations. *Sierra Diesel Injection Serv. v. Burroughs Corp.*, 648 F. Supp. 1148, 1152  
 17 (D. Nev. 1986) (the local law of the forum determines whether a claim is barred by the statute of  
 18 limitations). Under Nevada law, the torts of trespass, conversion and nuisance are all subject to a  
 19 three-year statute of limitations. NRS 11.190(3); *Kaplan v. Cty of Washoe*, 2020 WL 2843446, \*  
 20 (Nev. May 29, 2020) 464 P.3d 127 (unpublished disposition) (concluding that NRS 11.190(3)  
 21 provides a three-year statute of limitations for trespass and nuisance and “does not provide an  
 22 exception for claims of a continuing nature”); *Palludan v. Bergin*, 78 Nev. 441, 443, 375 P.2d  
 23 544, 545 (1962) (action for conversion subject to the three-year statute of limitations); *see also*  
 24 *Gann v. Saylor*, No. 3:15-CV-00264-MMD-WGC, 2015 WL 13707450, at \*6 (D. Nev. Aug. 20,  
 25 2015) (claims for trespass to real property and conversion are subject to the three-year statute of  
 26 limitations).

27

28

---

<sup>5</sup> The limitations period for an inverse condemnation claim under Nevada law is 15 years. *City of N. Las Vegas v. 5th & Centennial, LLC*, 130 Nev. 619, 625, 331 P.3d 896, 900 (2014).

1       In this case, the last acts or omissions Plaintiffs attribute to the City occurred in April  
 2 2017. ECF No. 1, ¶¶53-55. As such, Plaintiffs fail to allege facts in support of their state tort  
 3 claims claim within three years of the Complaint having been filed. Accordingly, Plaintiffs'  
 4 three tort claims (trespass, conversion and nuisance) are barred by the applicable Nevada statute  
 5 of limitations.

6       **2. Inverse condemnation (Nevada law).**

7       Plaintiffs fail to state a claim for inverse condemnation under Nevada law.<sup>6</sup> Such liability  
 8 presents a question of law. *City of Las Vegas v. Cliff Shadows Prof'l Plaza, LLC*, 129 Nev. 1,  
 9 11, 293 P.3d 860, 866 (2013); *see also Fritz v. Washoe Cnty.*, Case No. 75693, 2019 WL  
 10 2339457, \*2, note 2 (May 31, 2019) (unpublished disposition), *cert. denied*, 2020 WL 2105277  
 11 (U. S. May 4, 2020) (*Fritz II*).<sup>7</sup> Under Nevada law, a party claiming a taking based on the  
 12 diversion of surface water must allege (a) physical invasion of flood waters, and (b) resulting  
 13 substantial injury. *Buzz Stew, LLC v. City of N. Las Vegas*, 131 Nev. 1, 341 P.3d 646, 650  
 14 (2015) (*citing Cnty. of Clark v. Powers*, 96 Nev. 497, 501 n. 3, 504, 611 P.2d 1072, 1075 n. 3,  
 15 1076 (1980); *Fritz II*, \*3 (ruling a taking by flooding was not established were a property had  
 16 “only flooded three times and none of those times resulted in substantial damage sufficient to  
 17 destroy or impair the property’s usefulness”). Mere damage to property does suffice. *Sloat v.*  
 18 *Turner*, 93 Nev. 263, 268, 563 P. 2d 86,89 (1977) (the Nevada Constitution “provides for  
 19 compensation based solely on a taking by the state of private property, not for damage thereto.”).  
 20 Here, Plaintiffs fail to allege any facts to support these requisite elements.

21       First, the “physical invasion” element requires the subject property be subject to  
 22 “frequent and inevitable” flooding. *Powers*, 96 Nev. at 501, 611 P.2d at 1074-5. Here, the facts  
 23

---

24

25       <sup>6</sup> As previously noted, Plaintiffs fail to allege Danny Cleous has any ownership interest in 11630  
 26 Tupelo. ECF No. 1, ¶¶5 & 62. Thus, at a minimum, the Court should dismiss this claim as to  
 27 him. *See Cliff Shadows*, 129 Nev. at 866, 293 P.3d at 866 (to bring a takings claim, the party  
 28 must have “a legitimate interest in property that is affected by the government’s activity”).

7       <sup>7</sup> The Nevada Supreme Court’s ruling in *Fritz II* followed its prior determination that the district  
 court’s findings were insufficient to determine if there was a taking. *Fritz v. Washoe Cty. (Fritz*  
*I)*, 132 Nev. 580, 586, 376 P.3d 794, 796 (2016).

1 alleged by the Plaintiffs fail to satisfy this standard. Plaintiffs do not allege, for example, that the  
 2 event that constituted the taking—the overflow of Swan Lake—is “frequent and inevitable.”  
 3 Instead, they allege that the flooding event in this case occurred for the first time in 2017, and  
 4 that no such flooding had occurred in the prior 50 years. ECF No. 1, ¶14.

5 Second, the “substantial injury” element requires the physical invasion “effectually  
 6 destroy or impair [the property’s] usefulness.” Fritz, 2019 WL 2339457, \*2 (*citing Powers*, 96  
 7 Nev. at 501 n.3, 611 P.2d at 1075 n.3). Here, Plaintiffs do not allege that the only practical use  
 8 of subject property is “as a flood channel.” *See, e.g., Clark Cty.*, 96 Nev. at 501, 611 P.2d at  
 9 1075 (ruling a taking had occurred where the subject “property no longer had a practical use  
 10 other than as a flood channel”). To the contrary, they admit that Danny Cleous continues to use  
 11 the property at 11630 Tupelo as his primary residence. *Id.*, ¶ 64.

12 Finally, an inverse condemnation claim under Nevada law does not arise from mere  
 13 damage to property. *Sloat*, 93 Nev. at 268, 563 P. 2d at 89. Instead, a taking arises where the  
 14 “owner loses an interest in [his/her] property,” in which case an “award of just compensation is a  
 15 substitute for that lost interest in the property.” *Argier v. Nevada Power Co.*, 114 Nev. 137, 140,  
 16 952 P.2d 1390, 1392 (1998). In this case, however, Plaintiffs fail to identify any property right  
 17 allegedly taken by the City. Instead, they allege damage to the property (capable of being  
 18 “restored”), and “saturated soils.” ECF No. 1, ¶¶76, 78. These allegations fail to identify any  
 19 property interest that has allegedly been condemned.

20 In summary, Plaintiffs fail to state a claim for inverse condemnation under Nevada law.

## 21 V. CONCLUSION

22 For all the foregoing reasons, Defendant City of Reno requests that this Court dismiss the  
 23 Complaint with prejudice pursuant to FRCP 12(b)(6).

24 DATED this 22nd day of January, 2021.

25 KARL S. HALL  
 26 Reno City Attorney

27 By: /s/ William J. McKean  
 28 JONATHAN D. SHIPMAN  
 Assistant City Attorney

1 WILLIAM J. McKEAN  
2 Deputy City Attorney  
3 CHANDENI K. SENDALL  
4 Deputy City Attorney  
Post Office Box 1900  
Reno, Nevada 89505  
5 *Attorneys for Defendant City of Reno*

6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

Pursuant to LR IC 5-1, I certify that I am an employee of the RENO CITY ATTORNEY'S OFFICE, and that on this date, I am serving the foregoing document on the party(s) set forth below by:

Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

## Personal delivery.

CM/ECF electronic service, addressed as follows:

Luke Busby, Esq.  
316 California Ave #82  
Reno, NV 89509  
*Attorney for Plaintiffs*

Doyle Law Office  
4600 Kietzke Lane  
Suite I-207  
Reno, NV 89502  
*Attorneys for Plaintiffs*

Facsimile (FAX).

Federal Express or other overnight delivery.

## Reno/Carson Messenger Service.

DATED this 22nd day of January, 2021.

By: /s/ Jeanette Sparks

Jeanette Sparks  
Legal Assistant